



SEXUAL HARASSMENT PREVENTION TRAINING 2023



History

- Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, creed, color, sex or national original
- In 2018, New York State passed landmark legislation specifically targeting sexual harassment
- In 2019, New York State strengthened the law that was passed the previous year
- In 2023, New York State passed updates to the law which added additional provisions



WHAT IS SEXUAL HARASSMENT?

Sexual harassment is a form of sex discrimination that is unlawful including harassment on the basis of:

- Sex
- Sexual orientation
- Self-identified or perceived sex
- Gender expression
- Gender identity
- Status of being transgender



WHAT IS SEXUAL HARASSMENT?

Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment.



WHAT IS SEXUAL HARASSMENT?

Includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.



WHAT IS SEXUAL HARASSMENT?

Under the 2019 revisions to the New York State law, harassment need not be “severe or pervasive” to be unlawful. Any of the harassing conduct described in this training can be unlawful unless it is shown to be no more than “petty slights or trivial inconveniences.”

Generally, any behavior in which an employee or covered individual is treated worse because of their gender (perceived or actual), sexual orientation, or gender expression is considered harassing or discriminatory behavior.

Intent does not affect whether behavior is harassment.



QUID PRO QUO

- Better working conditions in exchange for a sexual relationship
- Retaliating for refusing to engage in a sexual relationship
- Using pressure to force a sexual relationship



HOSTILE WORK ENVIRONMENT

- Sexual or discriminatory displays or publications anywhere in the workplace such as pictures, posters, calendars, graffiti, promotional material, reading material or anything that is sexually demeaning or pornographic
- Displays on workplace computers or cell phones
- Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience



HOSTILE WORK ENVIRONMENT

- Physical acts of a sexual nature including touching, pinching, patting, grabbing, hissing, brushing against another person
- Displays on workplace computers or cell phones
- Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience



GENDER IDENTITY

Understanding gender diversity is essential to recognizing sexual harassment & gender discrimination.

Though there are many gender identities, the three most common ways people identify are:

- Cisgender: a person whose gender identity aligns with the sex they were assigned at birth.
- Transgender: a person whose gender identity is different than the sex they were assigned at birth.
- Non-Binary: a person who does not identify exclusively as a man or a woman. Some may identify as transgender, but not all do



WHO CAN BE A TARGET OF SEXUAL HARASSMENT?

- People of the same sex
- People of the opposite sex
- Employees
- Unpaid interns
- Volunteers
- Independent contractors



WHO CAN COMMIT HARASSMENT?

Anyone in the workplace including:

- Supervisors
- Customers
- Vendors
- Donors
- Clients
- Visitors
- Building Staff
- Volunteers
- Investors



WHERE CAN SEXUAL HARASSMENT OCCUR?

Whenever and wherever employees are fulfilling their work responsibilities including:

- In the workplace
- In the field
- At any employer sponsored event
- At a training or conference
- At a social event
- Online
- Working remotely
- Offsite or during non-work hours



EXAMPLES OF SEXUAL HARASSMENT

- A patient harasses his at-home caregiver.
- A customer asks a waitress to remove her mask so he can decide how much to tip.
- An employee frequently comments with discriminatory language on a coworker's social media posts.
- An employee gets handsy with his colleague at a hotel bar during a conference.
- A copy repair person tells jokes that are degrading toward women while fixing the copier.
- Cleaners employed by the building an organization rents space in discuss their sexual prowess loudly.
- A hotel guest gropes a housekeeper as she walks by.



SEX STEREOTYPING

- Occurs when conduct or personality traits are considered inappropriate simply because they may not confirm to ideas or perceptions about how individuals should act or look
- Harassing a person because that person does not confirm to gender stereotypes as to “appropriate” looks, speech, personality, or lifestyle is a form of sexual harassment
- Harassment because someone is performing a job that is usually performed, or was previously performed, mostly by persons of a different sex, is sex discrimination



SEX STEREOTYPING

- Amy is a steelworker with 25 years of experience. Her supervisor, Gus, always assigns a male coworker to partner with Amy on any project she is assigned. Similar projects he assigns to Amy's male coworkers to accomplish solo. When Amy confronts Gus, he explains that he just wants her to be safe as she is the only woman in a tough job.
- George is the primary caregiver for his young son as he works from home for a tech company while his wife goes into the office. George's toddler has been known to interrupt video meetings, but George's output is impeccable. Still, George is often left out of meetings because his boss does not want to deal with "Mr. Mom."



BYSTANDER INTERVENTION

1. Interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior.
2. Ask a third-party to help intervene in the harassment.
3. Record or take notes on the harassment incident to benefit a future investigation.
4. Check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok.
5. Confront the harassers and name the behavior as inappropriate only when you feel safe.



RETALIATION

Employees are protected by law from being retaliated against because of a protected activity

Protected activities with regard to harassment include:

- Making a complaint to a supervisor or designated person about harassment
- Making a report of suspected harassment, even if you are not the target
- Filing a formal complaint
- Opposing discrimination
- Assisting another employee who is complaining of harassment
- Providing information during a workplace investigation or testifying



RETALIATION

Examples of retaliation include:

- Sudden changes in work schedule or work location
- Reduced hours or the assignment to less desirable shifts
- Publicly releasing an employee's personnel files



SUPERVISOR'S RESPONSIBILITY

- Required to report any harassment that is reported to them or that they observe
- Responsible for any harassment or discrimination that they knew or should have known
- Expected to model appropriate workplace behavior



MANDATORY REPORTING

- Supervisors **must report any harassment** that they observe or know of, even if no one is objecting to the harassment
- Without exception, supervisors must promptly react – even if they believe the conduct is trivial or even if the harassed individual asks that it not be reported
- Supervisors will be subject to discipline for failing to report suspected harassment or allowing it to continue



WHAT SHOULD YOU DO IF YOU ARE HARASSED?

- Harassment in the workplace cannot be stopped unless management is aware of it
- It is everyone's responsibility to report
- Complaint forms are available or report may be verbal



WHAT SHOULD YOU DO IF YOU WITNESS HARASSMENT?

- Report it to a supervisor, manager or designee
- Tell coworkers “it’s not okay” when you are uncomfortable about harassment happening in front of you
- Know that it is unlawful for an employer to retaliate against you for reporting suspected harassment or assisting in any investigation



INVESTIGATION

- An investigation will be conducted quickly upon receipt of a complaint
- Relevant documents, emails, phone records, etc. will be reviewed
- Interviews will be conducted with all parties
- The individual bringing the complaint and the individual(s) accused of harassment will be notified of final determination and any appropriate action



ADDITIONAL PROTECTIONS & REMEDIES

- New York State Division of Human Rights (DHR)
 - Effective June, 2022, a toll-free confidential hotline for complaints of workplace sexual harassment was established
1-800-HARASS-3 (1-800-427-2773)
- United States Equal Employment Opportunity Commission (EEOC)
- For instances involving physical touching or coerced physical activities, contact the local police department



OTHER TYPES OF WORKPLACE HARASSMENT

- Workplace harassment can be based on other things than gender or in appropriate sexual behavior
- Any harassment or discrimination based on a protected characteristic (i.e. age, race, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity and criminal history) is prohibited

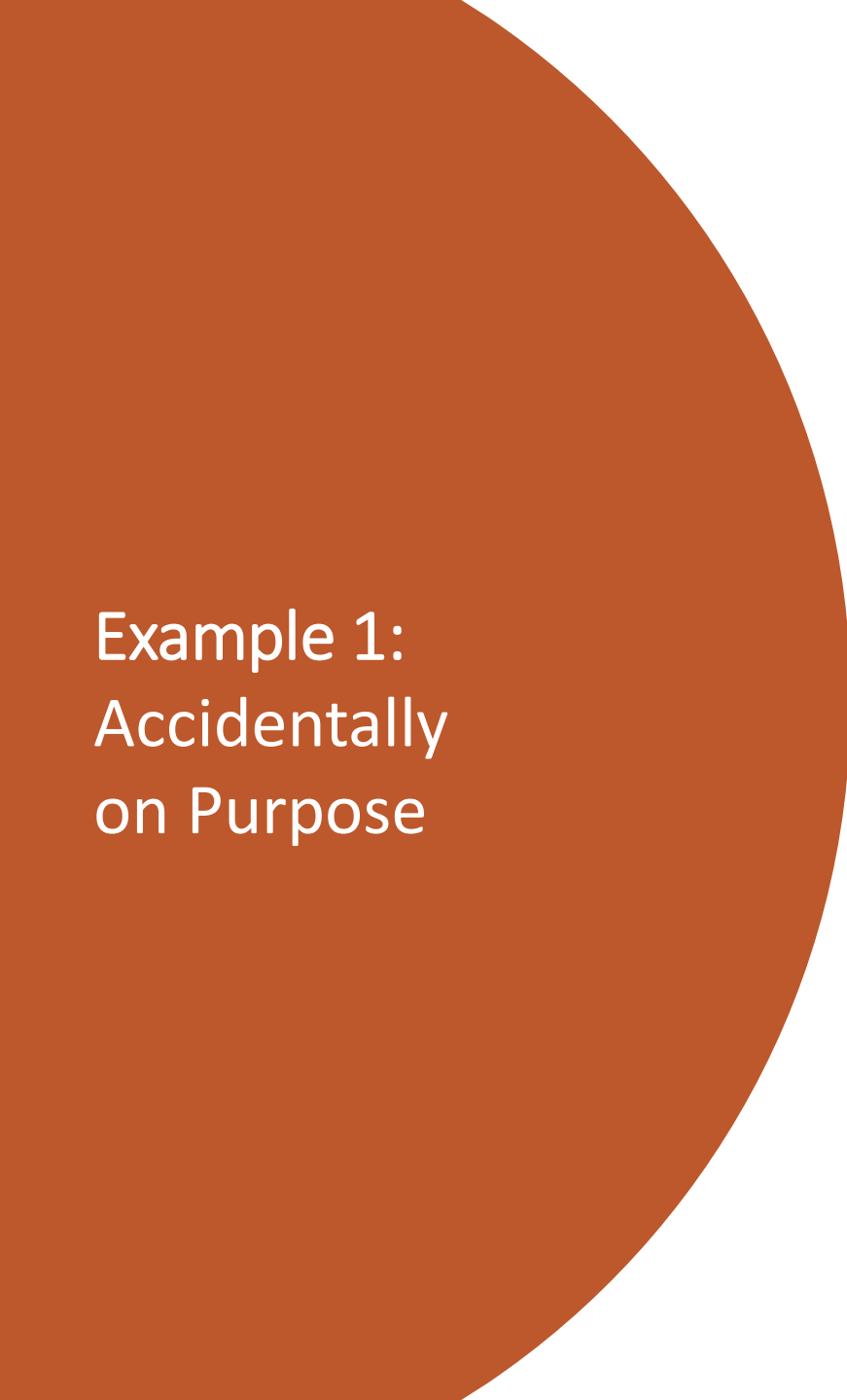
CASE STUDIES



Example 1: Accidentally on Purpose

June started a new job at a restaurant three months ago, and she is slowly getting to know her co-workers. While sharing a meal before the dinner rush, her manager, John, asks her if she has a boyfriend. June tells John that she would prefer not to talk about her personal life at work. He nods and changes the subject.


June's manager asked her a personal question that made her uncomfortable. Was this sexual harassment?

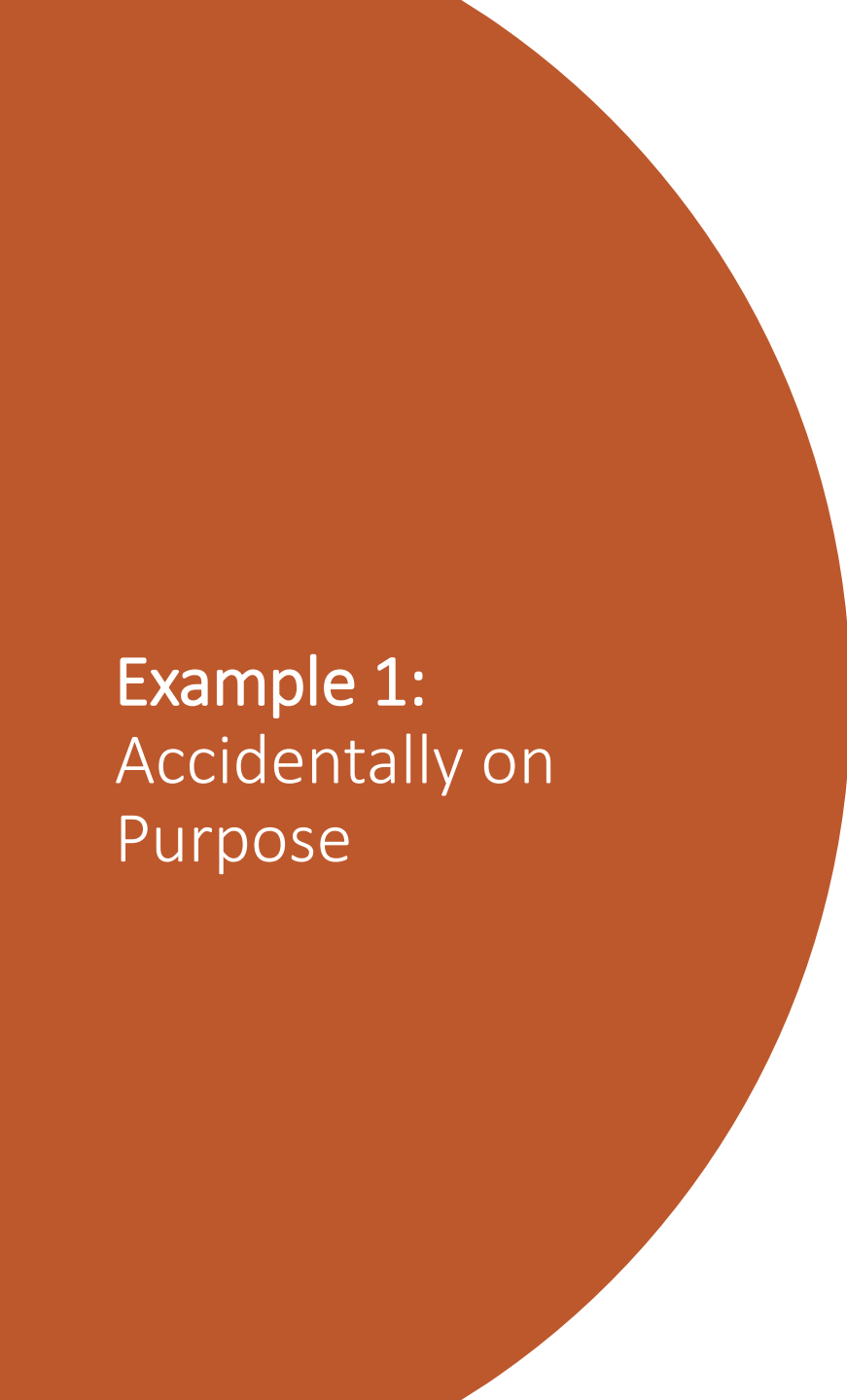


Example 1:
Accidentally
on Purpose

NO

Though John's question may have felt awkward to June, it was not, in itself, an act of harassment. John did not pursue the subject when June said she would prefer not to talk about it. It did not rise above a trivial inconvenience to a level of harassment or discrimination.






Example 1:
Accidentally on
Purpose

In the weeks that follow, whenever John is near June, he complains about how hard it is for him to date, discusses his past romantic relationships in detail, and asks June's advice on how to flirt with other women, often pointing out specific candidates. June repeatedly reminds John she would prefer not to talk about personal lives at work, but he ignores her and continues to make unwelcome comments. June finds herself avoiding him whenever she can.

True or False: John's behavior has escalated above a trivial inconvenience to sexual harassment.






Example 1:
Accidentally
on Purpose

True

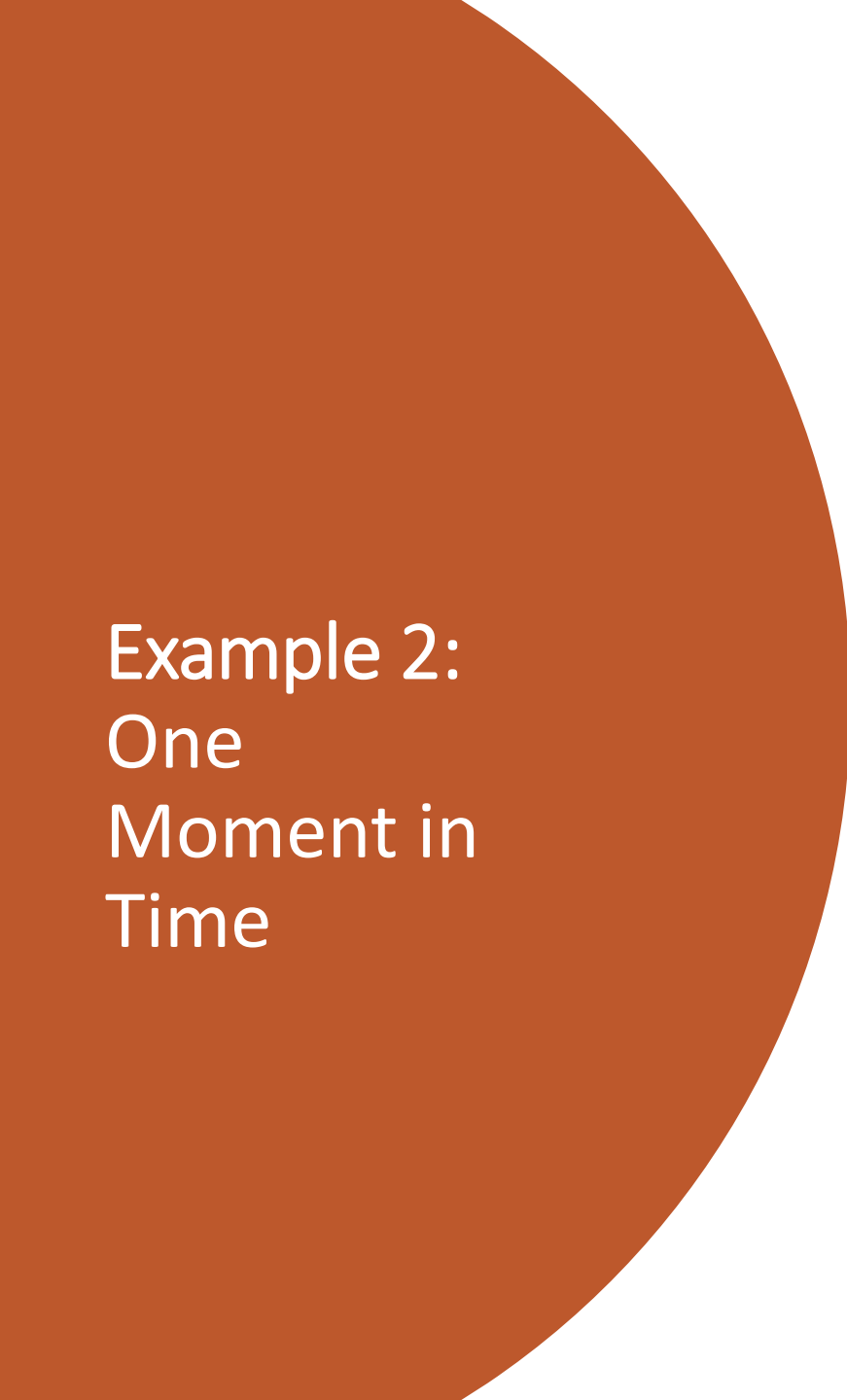
Each instance of sexual harassment is unique to the individual. In June's case, she made clear to John she was uncomfortable discussing any personal matters at work. Despite acknowledging this, John continued to cross June's boundaries, inquiring about her romantic history, and discussing sexual relationships at work. June's work life is impacted as she has adjusted the way she goes about her job to avoid interacting with John whenever she can. This appears to have escalated to a hostile work environment.



Example 2: One Moment in Time

Whitney is a paralegal at a large law firm that has adopted remote work as the primary way most employees work. As the firm transitioned to remote work, there were growing pains, and for a period of time, employees relied on their personal phones and email accounts to stay in touch while working from home. Though employees now have access to their work emails and phone numbers, on occasion a lawyer Whitney works with closely, Xander, will text her questions on her personal cell phone. One night, Xander texts Whitney a sexually explicit image.


True or False: Xander sent the image from his personal phone to Whitney's personal phone, so this is not a workplace issue.



Example 2:
One
Moment in
Time

FALSE

Though the incident did not happen in the workplace, harassment can occur wherever and whenever work takes place. Employee behaviors outside of work hours that might impact the workplace are covered under this policy. In this instance, though the photo was sent outside work hours, it might impact Whitney's relationship with Xander at work. Xander's behavior is covered by the sexual harassment prevention policy.

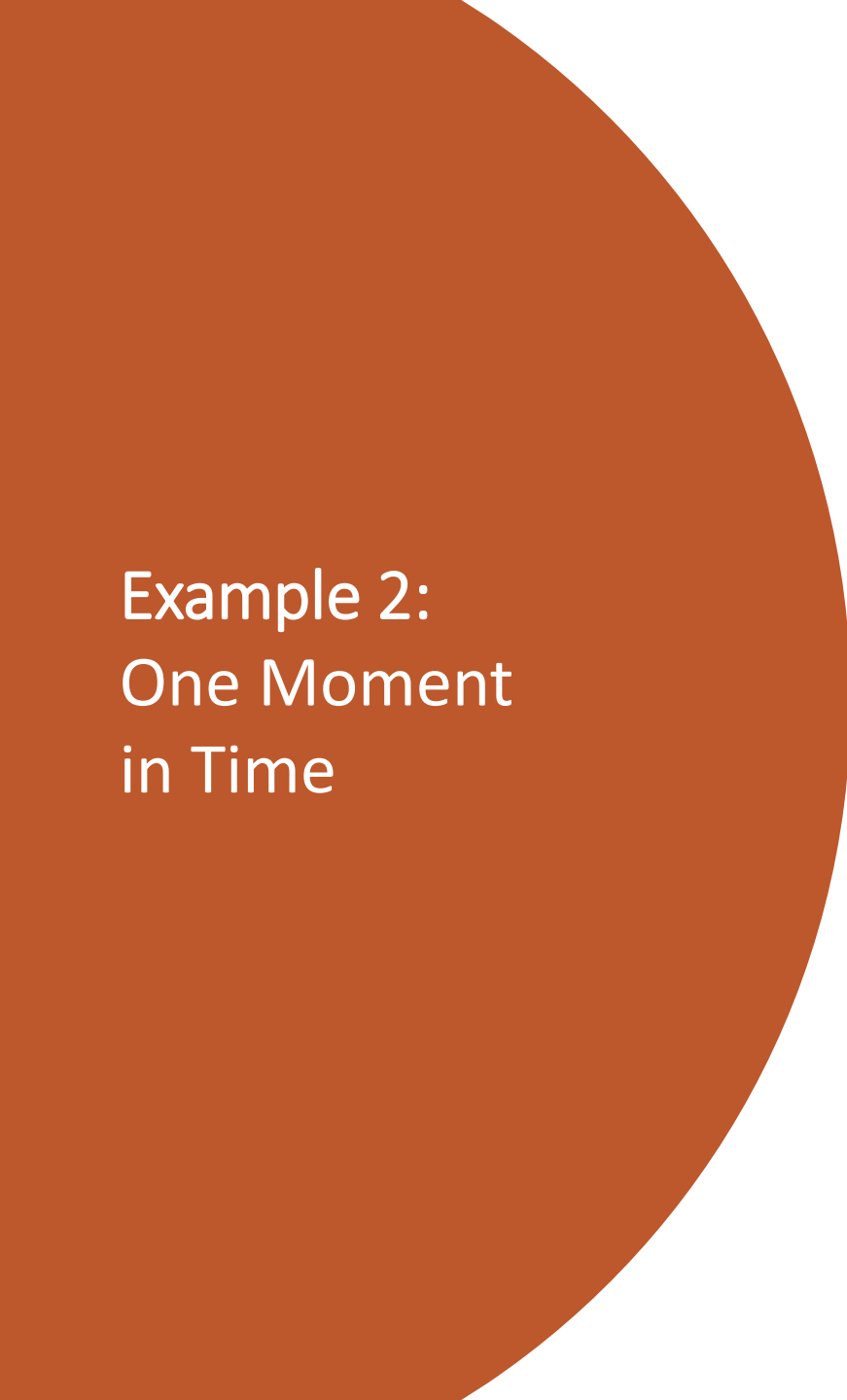


Example 2: One Moment in Time

The next day, after she did not respond, Xander sends Whitney a text apologizing for the night before, and states that the image was meant for someone else. A few weeks later, during a one-on-one meeting discussing a case over Zoom, Xander comments on the fact that Whitney's home workstation is set up in her bedroom, and jokes that he would love a virtual tour of "where the magic happens." Uncomfortable, Whitney finds an excuse to end the meeting quickly after that.

Later that same week, Xander sends Whitney a direct message during an all firm Zoom meeting telling her he "can't stop thinking about her in her bedroom" during the workday.


True or False: A hostile work environment cannot exist while working from home.



Example 2:
One Moment
in Time

FALSE

The remote workspace is an extension of the office. Regardless of where the employee is logging in from, any virtual video or text-based platform is a work environment and harassment and discrimination that takes place over these platforms constitute a hostile work environment.

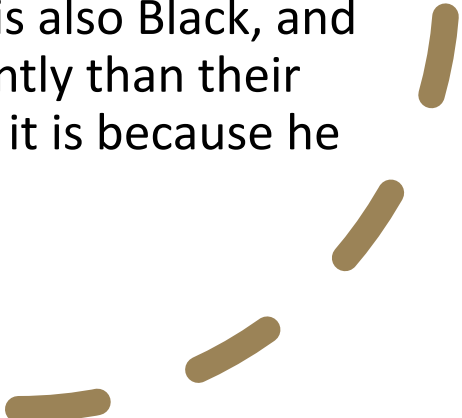




Example 3: Working Twice as Hard

Sandra is a first-year resident intern at a teaching hospital in Buffalo. She is the only Black woman in her intern class. She and her intern peers attend rounds every day with Dr. Grey. When asking interns questions, Sandra feels as though Dr. Grey holds her to a higher standard than the other interns. He frequently makes comments about her ignorance and belittles her answers to his questions, though her responses are in line with her fellow residents. One day, as they are walking between patient rooms, Sandra hears Dr. Grey tell a fellow intern that Sandra must have been a “diversity hire.”

Upset, Sandra confides in her fellow intern Justin about what she overheard. Justin tells Sandra that he understands she is upset, but she should not read too much into it. Justin is also Black, and he has never felt that Dr. Grey treats him differently than their non-Black peers. When Dr. Grey is hard on them it is because he wants them all to be great doctors.



Example 3: Working Twice as Hard

Sandra follows Justin's advice and does not make a formal complaint. As the months go by, Dr. Grey continues to bully Sandra during rounds, including rolling his eyes when she speaks and reacting dramatically when she gives wrong or incomplete answers, behavior that he doesn't exhibit toward any of her fellow residents, and that embarrasses her in front of colleagues and patients.

Recently, his comments have started to venture away from her medical knowledge. Dr. Grey has begun commenting that Sandra needs to make more of an effort in her appearance if she wants to be respected as a professional including wearing makeup and straightening her natural hair. When Sandra complains to her fellow intern Monica, who is white, Monica shrugs off Sandra's concerns because Dr. Grey has never made her feel uncomfortable with personal remarks.

True or False: Dr Grey's conduct is likely racial discrimination?

True or False: Dr Grey's conduct is likely sexual harassment?




Example 3: Working Twice as Hard

TRUE

Though Dr. Grey may assert his bullying of Sandra is not based on her race, his comments that she must be a “diversity hire” and that she should straighten her natural hair suggest a racial motivation. The fact that other Black colleagues have not felt mistreated based on race doesn’t matter to Sandra’s experience.

TRUE

Again, even if other women in her intern class feel respected, Sandra has experienced belittling behavior and remarks regarding her appearance that appear to be discriminatory based on her gender. This behavior likely meets the legal standard in New York for harassment, as it rises above a petty slight or trivial inconvenience.



Example #4 Shaken, Not Stirred

Jamila is a bartender at a popular Brooklyn restaurant. She has been with the restaurant for a month and is hoping to be scheduled during the popular Friday and Saturday evening shifts. Her manager Jason creates the shift schedule. She tells him she feels confident in her position and that she knows the restaurant patrons well enough to be scheduled for the high tipping weekend shifts. He tells her, "We'll see. We have a lot of qualified bartenders."

A week later, Jamila and Jason are closing after a Wednesday night shift. Jason pours them both a shot of tequila, asks Jamila to join him at the bar, and tells her that he hopes he will be able to give her some weekend shifts. He tells her that some other bartenders have been with the restaurant longer but that she is the one he wants. Jason places his hand on Jamila's knee and encourages her to drink the tequila. Jamila quickly takes the shot before jumping off the barstool and finishing her closing tasks.

True or False: Jason's behavior could be harassment of Jamila.

Example #4 Shaken, Not Stirred

TRUE

Jason's behavior as Jamila's boss is inappropriate, and Jamila should feel free to report the behavior if it made her uncomfortable.

Jason's behavior, at this point, may or may not constitute quid pro quo harassment; Jason has made no promise or threat to Jamila that he will handle her shift schedule differently based on how she responds to his advances. However, his discussion of shifts while making what could be seen as a sexual advance is inappropriate and might be considered potentially coercive. If Jason continues to make advances, even if he never makes or carries out any threat or promise about job benefits, this could create a hostile environment for Jamila, for which the restaurant owner could be strictly liable because Jason is her supervisor.

Example #4 Shaken, Not Stirred

After a week of continuing to receive less desirable shifts, Jamila asks Jason again if he would schedule her for a Friday or Saturday night. He says that he is not sure, but there is still time for her to “make it worth his while.” He then asks her to come home with him after work that night.

Jamila, who really needs the extra cash a Saturday night shift will bring in tips, decides to go home with Jason. Almost every week they go out at Jason's insistence and engage in sexual activity. Jason begins scheduling Jamila for Friday and Saturday evenings. Jamila does not want to be in a relationship with Jason and is only going out with him because she believes that he will change her schedule away from the busier shifts.


True or False: Jamila cannot complain of harassment because she voluntarily engaged in sexual activity with Jason.

Example #4 Shaken, Not Stirred

FALSE

Because the sexual activity is unwelcomed by Jamila, she is a target of sexual harassment. Equally, if she had refused Jason's advances, she would still be a target of sexual harassment. The offer to Jamila to trade job benefits for sexual favors by someone with authority over her in the workplace is quid pro quo sexual harassment, and the employer (in this case, the restaurant owner) is exposed to liability because of its manager's actions.

Can Jamila complain of harassment if she got the shifts she wanted?



Example #4
Shaken, Not
Stirred

YES

Jamila can be sexually harassed even if she receives a benefit




Example #4 Shaken, Not Stirred

After several months, during which she believes she has proven herself an asset during the weekend rush, Jamila breaks off the sexual activities with Jason. He immediately changes her schedule and places her in less desirable shifts with fewer customers and lower tips.

True or False: It is now “too late” for Jamila to complain. Her relationship with Jason was consensual so there is no proof she is receiving less favorable shifts due to the breakup.






Example #4
Shaken, Not
Stirred

FALSE

Jason's conduct constitutes quid pro quo sexual harassment; whether or not Jamila accepts and benefits from or rejects and is harmed by it is irrelevant.



Questions?

ginny.biesiada@gmail.com

315-415-4161

